Michael K. Jeanes, Clerk of Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2015-000170-001 DT 06/25/2015

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
J. Eaton
Deputy

STATE OF ARIZONA

v.

CORY JAY MEADER (001)

WEBSTER CRAIG JONES

ROBERT P JARVIS

MESA MUNICIPAL COURT
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case Number 2013–055489.

Defendant-Appellant Cory Jay Meader (Defendant) was convicted in Mesa Municipal Court of driving under the influence and driving under the extreme influence. Defendant contends the trial court erred as follows: (1) in not holding a voluntariness hearing; and (2) in instructing the jurors that voluntary intoxication was not a defense. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On August 10, 2013, Defendant was cited for driving under the influence, A.R.S. § 28–1381(A)(1) & (A)(2); driving under the extreme influence, A.R.S. § 28–1382(A)(1) & (A)(2); and possessing an open container of liquor in his vehicle, A.R.S. § 4–251(A)(2). Prior to the start of the trial, Defendant's attorney noted this was an actual physical control case because the officer found Defendant asleep while the vehicle was parked. (R.T. of Jun. 17, 2014, at 9–10.) In conducting a welfare check, the officer awoke Defendant by doing a "sternum rub," which he described as the officer's running his knuckles down the center of Defendant's chest. (*Id.* at 10.) Defendant's attorney then said the following:

> So what this all leads me to is my question about the voluntariness, Your Honor. So at the second that they do that, Mr. Meader wakes up from his sleep and he yells some profanities for them to get out of his vehicle, not recognizing who they are.
>
> So my comment to the prosecutor is this clearly isn't a voluntary statement. He's been awoken from an unconscious state through the infliction of pain and he's yelling for them to get out of his truck and he's using profanities.
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> . . . .
>
> So I think that statement, at a minimum, should not be allowed because it's not voluntary, and it's only—it has no bearing, only to prejudice the jury. Does that make sense?

(R.T. of Jun. 17, 2014, at 10–11.) The prosecutor responded that, if the trial court were considering excluding the statement, they would have to have a voluntariness hearing. (*Id.* at 11.) The trial court said it sounded like a spontaneous excited utterance and there would be a problem only if the officers used some threat or coercion to produce the statement. (*Id.* at 12.) Defendant's attorney noted Defendant's BAC was 0.303, which would make Defendant's statement not voluntary. (*Id.* at 12–13.) The trial court then denied Defendant's motion:

> Okay. Well, I Have to Deny the Motion. I don't see that the officer did anything that would not have been appropriate under the circumstances, and he didn't act in a way as to force him to make those statements, and, you know, there's spontaneous outbursts when he's woken up from a deep sleep or whatever, but that doesn't make them not voluntary. It just makes them spontaneous. So I have to deny the motion for the record.

(R.T. of Jun. 17, 2014, at 14.)

At trial, the officer testified that, when Defendant awoke, he said, "Get the fuck out of my car." (R.T. of Jun. 17, 2014, at 74.) As the officers continued their investigation, Defendant said this multiple times. (*Id.* at 75.)

After the State rested and the parties discussed jury instructions, the prosecutor said she was going to request an instruction that voluntary intoxication is not a defense. (R.T. of Jun. 18, 2014, at 51.) Defendant's attorney objected, and the trial court said it would have to do some research. (*Id.* at 52–53.) The trial court addressed this instruction again after the close of evidence. (*Id.* at 109.) The prosecutor said the instruction was a correct statement of the law; Defendant's attorney said the instruction was highly inappropriate. (*Id.* at 109–12.) In response to the trial court's question, Defendant's attorney said he was going to argue that the jurors could consider Defendant's level of intoxication in assessing the *Zarazoza* factors. (*Id.* at 113–14.) The trial court noted the statute provided temporary intoxication is not a defense to "any criminal act or requisite state of mind" and therefore said it would give the instruction. (*Id.* at 112, 115.) The trial court later instructed the jurors as follows:

> It is not a defense to any criminal act if the criminal act was committed due to temporary intoxication resulting from voluntary ingestion or consumption of alcohol.

(R.T. of Jun. 18, 2014, at 127.)

After arguments and final instructions, the jurors found Defendant guilty of the § 28–1381(A)(1), § 28–1381(A)(2), and § 28–1382(A)(1) charges, and not guilty of the § 28–1382(A)(2) charge. The trial court later imposed sentence. (R.T. of August 13, 2014, at 12–18.) On that same day, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZ. CONST. Art. 6, § 16, and A.R.S. § 12–124(A).

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II. ISSUES.

A. *Did the trial court abuse its discretion in not holding a voluntariness hearing.*

Defendant contends the trial court abused its discretion in not holding a voluntariness hearing. In *Wainwright v. Sykes,* 433 U.S. 72 (1977), the Court held the "Constitution does not require a voluntariness hearing absent some contemporaneous challenge to the use of the confession." 433 U.S. at 86. Following *Sykes,* the Arizona Supreme Court held a defendant must request a voluntariness hearing 20 days prior to trial, and if the defendant makes a request less than 20 days before trial or at trial, the trial court has the discretion whether to hold a voluntariness hearing. *State v. Alvarado,* 121 Ariz. 485, 488, 591 P.2d 973, 976 (1979). In the present case, Defendant's attorney did not raise the issue of Defendant's statement until the day of trial. (R.T. of Jun. 17, 2014, at 10.) Thus, the trial court then had the discretion whether, and to what extent, to hold a voluntariness hearing. Because the trial court considered and ruled on the issue, the trial court did not abuse its discretion in doing so.

Defendant appears to contend that the trial court should have held an evidentiary hearing with live witnesses. As noted above, the trial court had the discretion for the scope of the voluntariness hearing. The trial court considered the arguments of the attorneys and their views of the facts of the case, and ruled accordingly. Defendant makes no claim that he was unable to make a full presentation of his position, thus Defendant has failed to show any prejudice.

Finally, Defendant contends the trial court should have found his spontaneous statement involuntary. In *Colorado v. Connelly,* 479 U.S. 157 (1986), the Court stated, "Absent police conduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law." 479 U.S. at 164. It went on to "hold that coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment." 479 U.S. at 167. In the present case, the trial court found the officer rubbed Defendant's sternum, Defendant awoke, and then Defendant made the spontaneous statement. Although the police conduct may have caused Defendant to awaken, there was nothing to show the police conduct caused Defendant to then make his statement. The trial court thus correctly found Defendant's statement was voluntary.

Even if the trial court had held a full-blown evidentiary hearing, the result would have been the same. At a voluntariness hearing, a statement is presumed involuntary, and the State has the burden to establishing the statement is voluntary. *Ryan v. Superior Court,* 121 Ariz. 385, 387, 590 P.2d 924, 926 (1979). The State meets its burden, however, if the evidence shows the statement was obtained without threat, coercion, or promise of immunity or a lesser penalty. *State v. Boggs,* 218 Ariz. 325, 185 P.3d 111, ¶ 44 (2008); *State v. Ellison,* 213 Ariz. 116, 140 P.3d 899, ¶ 31 (2006). In the present case, the facts showed the officer awoke Defendant, but no officer made any threat, coercion, or promise of immunity or a lesser penalty. In fact, the officers said nothing before Defendant made his spontaneous statement. The trial court therefore did not abuse its discretion in admitting that statement.

B. *Did the trial court abuse its discretion in giving the jury instruction on voluntary intoxication not being a defense.*

Defendant contends the trial court abused its discretion in giving a jury instruction that voluntary intoxication is not a defense. The applicable statute provides in part as follows:

> Temporary intoxication resulting from the voluntary ingestion, consumption, inhalation or injection of alcohol . . . is not a defense for any criminal act or requisite state of mind.

A.R.S. § 13–503. The trial court gave the following instruction;

> It is not a defense to any criminal act if the criminal act was committed due to temporary intoxication resulting from voluntary ingestion or consumption of alcohol.

(R.T. of Jun. 18, 2014, at 127.) The trial court's instruction properly stated the law, thus the trial court did not abuse its discretion in giving that instruction.

Defendant contends, however, that instruction did not apply because the DUI offenses did not require a mental state. The statute provides temporary intoxication "is not a defense ***for any criminal act*** or requisite state of mind." (Emphasis added.) That statute thus is not limited just to offenses that have a requisite mental state, and instead applies to all criminal acts.

III. CONCLUSION.

Based on the foregoing, this Court concludes the trial court did not abuse its discretion (1) in not holding a voluntariness hearing and (2) in instructing the jurors that voluntary intoxication was not a defense.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the Mesa Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Mesa Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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